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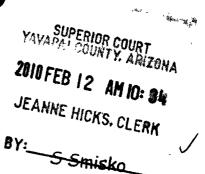
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YAVAPAI COUNTY ATTORNEY'S OFFICE JOSEPH C. BUTNER SBN 005229 DEPUTY COUNTY ATTORNEY 255 East Gurley Street Prescott, AZ 86301 Telephone: 928-771-3344

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IN THE SUPERIOR COURT OF STATE OF ARIZONA IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

V.
STATE'S OBJECTION TO
DEFENDANT'S REQUEST FOR JAMES
KNAPP'S MEDICAL RECORDS

Defendant.

The State of Arizona, by and through undersigned counsel, in response to the defendant's Motion to Release Medical Records, opposes the motion and respectfully requests this Court to deny the motion, for the reasons contained in the following Memorandum

MEMORANDUM OF POINTS AND AUTHORITIES

State courts are generally free to limit the nature and extent of discovery permitted in criminal cases. State ex rel. Romley v. Superior Court [Roper, Real Party in Interest], 172

Ariz. 232, 238, 836 P.2d 455 (App. 1992) ["Roper"]. However, limitation of discovery is subject to the United States Supreme Court's decision in Brady v. Maryland, 373 U.S. 83

(1963), which entitles a defendant the right of access to any evidence favorable to the defense and material to either guilt or punishment. Roper at 238, 836 P.2d at 461 [emphasis added].

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Evidence is material if there is a reasonable probability that its disclosure would have altered the result at trial. Id.

The State asserts that the defendant has not met his burden of establishing how the records are essential to his stated defenses of denial, lack of intent, alibi and mistaken identity. It is impossible to discern how the requested records are relevant or material in this case.

Mr. Knapp's Mayo Clinic medical records are not going to show: (1) that the he allegedly lied to police about his knowledge of and interactions with the defendant; (2) that he was the first person on the murder scene; (3) that he committed suicide some 6 months after the murder; or (4) that he had unrestricted access to the crime scene.

Under Arizona Rules of Evidence, Rule 401, relevant evidence is defined as evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." For evidence to be relevant there must be a "reasonable connection" between the evidence and the current issue or charge. State v. Pope, 113 Ariz. 22, 26, 545 P.2d 946, 950 (1976), citing State v. Wayman, 104 Ariz. 125, 449 P.2d 296 (1969) (in an indecent exposure prosecution, the court refused to allow the defense to question the witnesses about their prior sexual relationships). The evidence to be admitted must be relevant to the issues at trial. State v. Munguia, 137 Ariz. 69, 668 P.2d 912, 914 (App. 1983).

A murder defendant' right to cross-examine witnesses against him was not violated by the trial courts decision refusing pre-trial disclosure of victim's medical records. The victim, who was deceased, did not testify and thus there was no reason to discredit his ability to actually perceive events. The Confrontation Clause rights were trial rights that did not

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afford defendant the right to pre-trial discovery of victim's medical records. *State v Connor*, 215 Ariz. 553, 162 P.3d 596, (2007).

Conclusion:

James Ralph Knapp died months after this murder and his dated medical records contain no evidence that could dis-credit his ability to actually perceive events relative to the case. Once the physician-patient privilege attaches, it prohibits not only testimonial disclosures in court, but also pre trial discovery of information within the scope of the privilege. *Connor*, supra.

The Defendant has failed to offer a single shred of proof that Knapp's medical records are relevant or material to the case. The attempt to discover his unrelated medical records is nothing more than a fishing expedition.

The State respectfully requests the Court to Deny Defendant's Motion for the Release of Medical Records for James Knapp.

RESPECTFULLY SUBMITTED this // February, 2010.

Sheila Sullivan Polk

YAVAPAI COUNTY ATTORNEY

By: // Wyll Joseph C. Butner

Deputy County Attorney

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1	COPIES of the foregoing delivered this day of February, 2010 to:
2	•
3	Honorable Thomas J. Lindberg Division 6
4	Yavapai County Superior Court (via email)
5	Inha Cara
6	John Sears 107 North Cortez Street, Suite 104
7	Prescott, AZ 86301 Attorney for Defendant
8	(via email)
9	Larry Hammond
10	Anne Chapman Osborn Maledon, P.A.
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12	Attorney for Defendant (via email)
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14	By: Mubb
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